RECENT CASES

ATTEMPT TO COMMIT CRIME—HOW NEAR CONSUMMATION ACT MUST BE, TO BE INDICTABLE.—THE KING V. HARRY ROBINSON, 2 K. B. 342, 84 L. J. K. B. 1149.—Appellant insured his stock of jewelry against burglary, then rifled his own safe and had himself bound to a chair, to present the appearance of having been robbed. He then set up an outcry, and told the police sergeant, who came in response, that he had been knocked on the head by some intruder. On investigation the jewelry was found and appellant confessed to having devised the fraud in order to obtain the insurance money. Appellant was indicted and convicted of attempting to obtain money under false pretenses. The conviction was quashed in the Court of Criminal Appeal. *Held,* that since there must be some act beyond mere preparation to constitute attempt, it is not sufficient to show that the accused made the false pretense to a third person with the expectation that the latter would report it to the person intended to be defrauded.

Bishop defines criminal attempt as "the intent to do a particular criminal thing, combined with an act which falls short of the thing intended." 1 Bish. Crim. Law, sec. 728. Many English and American courts, finding intent in the act, hold that no effort is an indictable attempt, unless it has gone so far that, if not frustrated by extraneous circumstances, it would have resulted in full consummation of the actual crime. *Reg. v. Collins,* L. and C. 471, *Reg. v. Eagleton,* 24 L. J. M. C. 158; *State v. Hewett,* 158 N. C. 627; *State v. Davidson,* 172 Mo. App. 356; *People v. Grubb,* 141 Pac. (Cal. App.) 1051. Under this doctrine the principal case is correctly decided. The difficulty that presents itself is that in many cases, especially where the last physical act of the offender is simultaneous with the completion of the crime, no indictment for the attempt could with certainty be made save where indictment for the crime would also be possible. In recognition of this fact, though perhaps not avowedly, some courts prefer the more general interpretation: "an act done in *part* execution of a design to commit a crime." *State v. Harwick,* 133 La. 545; *State v. Donovan,* 90 Atl. (Del. Gen. Sess.) 220; *State v. Lampe,* 154 N. W. (Minn.) 737; *State v. Huber,* 148 Pac. (Nev.) 562.

C. B.

CONSTITUTIONAL LAW—CARRIERS—REGULATION OF JITNEYS.—CITY OF MEMPHIS V. STATE EX REL. RYALS, 179 S. W. (TENN.) 631.—*Held,* Acts 1915, c. 60, regulating jitneys as common carriers, and prohibiting their operation except upon prescribed conditions does not make an arbitrary classification, but is a valid exercise of the police power.

An interesting example of the application of well established legal doctrines to a new situation is evidenced by a line of recent decisions passing upon the validity of legislative regulations of the jitney. The state has undoubted power to protect the health and welfare of its people, and to impose restrictions having reasonable relation to that end. The

nature and extent of these restrictions are matters for legislative judgment, and unless the regulation is palpably unreasonable and arbitrary, the court is not at liberty to say that it passes beyond the limits of the state's protective power. *McClean v. Arkansas,* 211 U. S. 539; *Price v. Illinois,* 238 U. S. 446. The specific regulation of one kind of business, which may be necessary for the protection of the public, can never be the just ground of complaint because like restrictions are not imposed upon other businesses of a different kind. *Soon Hing v. Crowley,* 113 U. S. 703; *Booth v. Indiana,* 237 U. S. 391. The use of automobiles in the city streets may be regulated by statute, and under certain circumstances by ordinance. II Dillon, Municipal Corporations (5th ed.), p. 1086. A regulation requiring operators of automobiles to pay a registration fee is constitutional. *Commonwealth v. Boyd,* 188 Mass. 79. Regulations limiting the speed of automobiles are not invalid because of unreasonable discrimination. *Christy v. Elliott,* 216 Ill. 31; *Schaar v. Comforth,* 151 N. W. (Minn.) 275. The statute under consideration in the principal case was passed upon and upheld in *Nolen v. Reichman,* 225 Fed. 812. The District Court said, "Here is a new class of common carriers clearly pointed out and defined in the law, differing in material respects from other common carriers." Ordinances and statutes regulating the operation of jitneys have been held valid by other courts. *Ex parte Cardinal,* 150 Pac. (Cal.) 348; *Ex parte Dickey,* 85 S. E. (W. Va.) 781; *Green v. City of San Antonio,* 178 S. W. (Tex.) 6; *Pub. Serv. Commission v. Booth,* 156 N. Y. S. 140. The principal case is clearly supported by authority, and seems correct in principle in view of the peculiar character and functions of the jitney, pointed out by Mr. Justice Williams at p. 633.

S. H. S.

CRIMINAL LAW—TRIAL—CUSTODY OF JURY.—LEE V. STATE, 179 S. W. (TENN.) 145.—*Held,* in a capital case it is reversible error to permit the jury to go at large pending the trial, even though the accused consent, thus depriving him of his constitutional guaranties of a fair trial by jury.

In *non-capital* cases the court may at its discretion allow the jury to separate. *People v. Stowers,* 254 Ill. 588; *Commonwealth v. Simon,* 44 Pa. Super. Ct. 538, 545. And when so separated, prejudice to accused will not be presumed. *State v. Baudoin,* 115 La. 773; *contra, State v. Bennett,* 71 Wash. 673. But separation of jurors in a *capital* case is ground for reversal. *State v. Gray,* 100 Mo. 523. Unless the veniremen are not yet sworn as jurors. *Bell v. State,* 140 Ala. 57; *State v. Todd,* 146 Mo. 295. But if separated after being sworn in, prejudice will be presumed. *People v. Adams,* 143 Cal. 208. However, if the state shows by affidavits of jurors that they were not subjected to improper influences while separated, *State v. Schaeffer,* 172 Mo. 335; or that the separation was necessary and permitted and the jurors accompanied by a sworn court officer, *Bilton v. Territory,* 99 Pac. (Okla.) 163, no error will be found. And a further exception is made when counsel for the accused consents to the separation of the jury. *Carter v. State,* 10 Ga. App. 851. The rule in the principal case seems to be the best one from the standpoint of protection to the accused. Consent to a separation of the jury if refused by accused would undoubtedly